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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,561	04/25/2001	Yann Cheri	35451/127 (3626.Palm)	7494
26371	7590	01/25/2006	EXAMINER	
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			CASCHERA, ANTONIO A	
			ART UNIT	PAPER NUMBER
			2676	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/842,561	Applicant(s) CHERI ET AL.	
	Examiner Antonio A. Caschera	Art Unit 2676	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____


MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
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Continuation of 11. does NOT place the application in condition for allowance because: In reference to claims 1-17, Applicant argues that, "While Helms specifically teaches the advantages of using its disclosed invention in low ambient light conditions, Ottenstein, viewed as a whole, specifically teaches away from such usage by stating to the contrary that its disclosed invention should not be used at low ambient light levels," (see pages 6-7 of Applicant's Remarks). The Office firstly states that although Ottenstein may utilize his disclosed invention in a certain range of ambient light levels, Ottenstein performs his invention, nonetheless, within a low ambient light environment. The Office further explains its positions based upon the cited passage from Ottenstein which reads, "...the automatic brightness control need not and should not operate at low ambient light levels, say less than 10% of maximum," (see columns 3-4, lines 68-2 of Ottenstein). As can be seen, Ottenstein does in fact operate upon low ambient light, the low ambient light level required to be greater than or equal to 10% of maximum. Ottenstein is not teaching away from the low ambient light conditions of Helms since Ottenstein discloses that his invention ("auto mode" see column 3, lines 66-68 of Ottenstein) operates when the ambient light level is at 10% of maximum. Therefore, the Office interprets Ottenstein to be directly applicable to the low ambient lighting of Helms and maintains its current rejection based upon Ottenstein and Helms.

Further, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Ottenstein discloses a bezel of a display comprising two ambient light sensors, positioned around the face of the display (see column 1, lines 59-60) where the ambient light sensors are used in providing input to a microprocessor regarding ambient light conditions at the face of the display (see column 4, lines 65-66 and #12 and 13 of Figure 1, light represented by arrows points towards the sensors & face of the display). Helms discloses the use of two photodetectors to detect ambient light directed toward a display (see column 4, lines 41-51 and #14', 410 of Figure 4), the display comprised within a laptop computer or a handheld device (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the automatic display brightness adjustment techniques of Ottenstein with the handheld computer display of Helms in order to extend the application of Ottenstein's invention to a mobile computing device, making the invention more portable and user friendly (see columns 1-2, lines 56-2 of Helms and also see *In re Lindberg*, 93 USPQ 23 (CCPA 1952)). Both references are directed to automatically adjusting a computer system display using low ambient light conditions via sensor input data and therefore the Office believes the combination of these references to be just as the brightness techniques of Ottenstein would, for purposes of improving the viewing of multi-light condition displays while conserving energy, have been obvious to combine with the techniques of Helms whom employs a mobile display device subject to such multi-light conditions.

In reference to claims 12 and 17, Applicant argues that the Ottenstein reference suggests maintaining constant contrast while varying brightness levels and that since Katada discloses the contrast being adjusted based upon light quantity, the references are not combinable (see pages 9-10 Applicant's Remarks). The Office disagrees in the interpretation of Ottenstein above and points to column 3, lines 16-27 in Ottenstein. Ottenstein explicitly discloses varying the contrast of the screen using the equation of line 22 which utilizing an ambient brightness level reading (see column 3, lines 24-25). This shows that the contrast of the display is varied while Ottenstein's auto brightness control is implemented. Furthermore, the claimed limitations of claims 12 and 17 simply disclose a generation of a contrast signal which is clearly disclosed by Katada and further implemented in Ottenstein when automatically setting brightness. Therefore, the Office maintains its current rejection based upon Ottenstein, Helms and Katada..